

§ 560.309 Marine terminal facilities agreement-exemption.

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more common carriers by water, to the extent that the agreement involves ocean transportation in interstate commerce, which conveys to any of the involved parties any rights to operate any marine terminal facility by means of lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 560.309(a) are exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, and this part 560.

(c) Copies of any and all marine terminal facilities agreements currently in effect shall be provided, by parties to such agreements, to any requesting party for a reasonable copying and mailing fee.

(d) The filing fee for such agreements is described in section 560.401(c).

[58 FR 5630, Jan. 22, 1993, as amended at 59 FR 63908, Dec. 12, 1994]

Subpart D—Filing and Form of Agreements

§ 560.401 Filing of Agreements; fees.

(a) Agreement approval requests shall be submitted to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001. Such requests shall consist of a true copy and 10 additional copies of the agreement and all supporting information. Requests shall also be accompanied by a letter of transmittal which summarizes the agreement's contents and expressly requests Commission approval pursuant to section 15. The true copy shall be signed by each of the proponents personally or by an authorized representative and shall show immediately below each signature the name, position, and authority of the signer. Requests for approval which do not meet the requirements of this section shall be rejected within 30 days of receipt.

(b) Assessment agreements shall be filed and shall be approved upon filing.

(c) Agreement filings for Commission action requiring detailed justification and review by the Commission shall be accompanied by remittance of a \$1,402 filing fee; agreement filings for Commission action not requiring detailed justification, but requiring review by the Commission, shall be accompanied by remittance of a \$695 filing fee; and, agreement filings for terminal and carrier exempt agreements shall be accompanied by remittance of a \$120 filing fee.

[52 FR 43909, Nov. 17, 1987, as amended at 57 FR 40619, Sept. 4, 1992; 59 FR 63908, Dec. 12, 1994]

§ 560.402 Form of agreements.

(a) A request for approval of an agreement modification shall be filed in accordance with § 560.401 and shall identify the page and paragraph to be amended and restate each such paragraph. The language to be excised shall be struck through, but not obliterated, and the substituted language, if any, shall be inserted directly following that which is to be excised. The new language shall be underscored. If the modification does not completely replace approved provisions, the page or pages on which the proposed amendments will appear shall be restated with the proposed amendments underscored and placed in proper sequence on the page.

(b) Whenever an approved agreement has been modified three times in the manner described in paragraph (a) of this section, the next succeeding modification shall be accomplished by restating the entire agreement, incorporating all previous modifications, and showing the latest change in the manner required by paragraph (a) of this section.

§ 560.403 Supporting statements.

An agreement submitted for approval may be accompanied by a supporting statement, signed by an authorized representative of the proponents, indicating the reasons which caused the making of the agreement and the results intended to flow from its implementation, or other facts or arguments which support approval. Affidavits or

other evidence may be attached to such statements. Supporting statements, including all documents, affidavits or other evidence attached thereto, are public records. No claims of confidentiality will be allowed.

§ 560.404 Time for filing agreements.

(a) All modifications of approved agreements shall be filed within the following specified times:

(1) Applications for extension of an approved agreement due to terminate by its own terms, shall be filed so that the Commission will receive the application not less than one hundred twenty (120) days prior to the date on which the approved agreement would otherwise terminate.

(2) Modifications of an approved agreement, other than as designated in paragraph (a)(1) of this section, should be filed not less than one hundred twenty (120) days prior to the date it is intended that action will begin, change or cease as a result of the provision(s) of the modification.

(b) Failure to file an application for the extension of an approved agreement due to terminate by its own terms at least one hundred twenty (120) days in advance of the termination date may result in the approved agreement terminating prior to Commission action on the filed amendment.

[52 FR 43909, Nov. 17, 1987, as amended at 57 FR 40619, Sept. 4, 1992]

Subpart E—Content of Agreements

§ 560.501 Provisions of conference agreements.

(a) *Voting.* Conference agreements, agreements between or among conferences, and agreements whereby the parties are authorized to fix rates (except leases, licenses, assignments or other agreements of similar character for the use of marine terminal facilities) submitted to the Commission for approval shall contain a provision stating the manner in which the joint business of the parties may be carried out: i.e., full conference meeting, agents' meeting, principals' meeting, owners' meeting, through committees or subcommittees, telephone or oral polls, or

through any other procedure by which the business of the joint parties may be conducted. This provision shall also include quorum requirements and the types of vote necessary to take various actions; i.e., majority, two-thirds, three-fourths, majority plus one, unanimous, etc.

(b) *Membership.* Conference agreements shall include a provision substantially as follows:

Any common carrier by water in interstate commerce which has been regularly engaged as a common carrier in the trade covered by this agreement, or who furnishes evidence of ability and intention in good faith to institute and maintain such a common carrier service between ports within the scope of this agreement, and who evidences an ability and intention in good faith to abide by all the terms and conditions of this agreement, may hereafter become a party to this agreement by affixing its signature thereto.

This section will not preclude the conference from imposing legitimate conditions on membership, including but not necessarily limited to, the payment of an admission fee, payment of any outstanding financial obligations arising from prior membership, or the posting of a security bond or deposit. All such conditions must be made expressed terms of the conference agreement, filed with and approved by the Commission pursuant to section 15 of the Act.

(c) Every application for membership shall be acted upon promptly.

(d) Any party may withdraw from the conference without penalty by giving at least 30 days' written notice of intention to withdraw to the conference, except that action taken by the conference to compel the payment of outstanding financial obligations by the resigning member shall not be construed as a penalty for withdrawal.

(e) No party may be expelled against its will from the conference except for failure to maintain a common carrier service between the ports within the scope of the agreement (said failure to be determined according to the minimum sailing requirements set forth in the agreement) or for failure to abide by all the terms and conditions of the agreement.